



November 22, 2016

**VIA EMAIL**

Freedom of Information Officer  
U.S. Environmental Protection Agency Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590  
R5foia@epa.gov

**Re: FOIA Request – Request for ELGs Variance for Edwardsport IGCC plant**

Dear Records Custodian:

On behalf of the Sierra Club, I am writing to request that the U.S. Environmental Protection Agency (“EPA”) provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the EPA regulations at 40 C.F.R. § 2.100, *et seq.*

The Sierra Club is the nation’s oldest environmental organization. It is dedicated to the protection and preservation of the natural and human environment. The Sierra Club is committed to solving the pressing environmental and health problems associated with the mining, burning and disposal of coal and its combustion by-products.

**Documents Requested**

Please provide copies of the following records:

Any documents submitted by Duke Energy Indiana, Inc., Duke Energy Corporation, or any other person or entity that seek a variance or waiver from any requirement of the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (commonly known as the ELGs), 80 Fed. Reg. at 67,838 (Nov. 3, 2015), 40 CFR Part 423, for the Edwardsport Integrated Gasification Combined Cycle electric generating facility, located in Knox County, Indiana.

That date range for this request is November 3, 2015 through the date of your response.

**Exempt Records**

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra

Club to appeal the denial. To comply with legal requirements, the following information should be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club at the address listed below.

### **Fee Waiver Request**

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to use the requested information to inform the public, so the public can meaningfully participate in the dialog concerning pollution generated by coal-fired power plants, as well as EPA's investigations related to such pollution.

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute—that "disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records concerns identifiable "operations and activities of the government."

The activities denoted in this request are "identifiable operations or activities of the government." The Department of Justice Freedom of Information Act Guide expressly concedes that "in most cases records possessed by a federal agency will meet this threshold" of identifiable operations or activities of the government. And, in any event, the requested documents relate to EPA enforcement of Clean Water Act requirements, which is an activity of the U.S. government.

2. The disclosure of the requested documents has an informative value and will be "likely to contribute to an understanding of Federal government operations or activities."

The Freedom of Information Act Guide makes it clear that, in the Department of Justice's view, the "likely to contribute" determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are "likely to contribute" to an understanding of your agency's operations or activities because they are not otherwise in the public domain and are not accessible other than through a FOIA request. This information will facilitate meaningful public understanding of EPA's enforcement process for Clean Water Act regulations, therefore fulfilling the requirement that the documents requested be "meaningfully informative" and "likely to contribute" to an understanding of your agency's enforcement of federal environmental statutes and regulations.

3. The disclosure contributes to the understanding of the public at large.

The Sierra Club and its members have a longstanding interest and expertise in the subject of coal-fired power plants. More importantly, the Sierra Club unquestionably has the "specialized knowledge" and "ability and intention" to disseminate the information requested in a broad manner, and to do so in a manner that contributes to the understanding of the "public-at-large." The Sierra Club intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the Club's website, emailing, and list-serve distribution to members. Such dissemination will inform the public regarding how EPA goes about investigating and enforcing Clean Water Act requirements.

4. The disclosure contributes "significantly" to public understanding of government operations or activities.

The records requested will contribute "significantly" to the public understanding of the government's investigatory and enforcement role, and its "operations and activities" associated with Clean Water Act requirements at coal-fired power plants. Further, the disclosure of the requested records is essential to public understanding of the potential impacts of emissions from these facilities. After disclosure of these records, the public's understanding of the potential impacts of emissions from these facilities will be significantly enhanced.

5. Sierra Club has no commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest" as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club's mission to inform the public on matters of vital importance to the environment and public health.

November 22, 2016

Page 4

The Sierra Club respectfully requests, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

### **Record Delivery**

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and the agency's regulations. 5 U.S.C. § 552, (a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce the records above by sending them to me at the address listed below. Please produce them on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

If possible, please send all documents in PDF format via electronic mail, external website, or on CD or DVD via traditional mail. Alternatively, paper copies are acceptable, but electronic format is preferred. Please send all requested records as soon as possible to:

Tony Mendoza  
Sierra Club Environmental Law Program  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
tony.mendoza@sierraclub.org

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply.

/s/ Tony G. Mendoza  
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